

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.849 OF 2007**

Nisarga Mitra Kolhapur & Ors. ..Petitioners.
Vs.

Hindustan Aluminium Company & Ors. ..Respondents.

Smt.Sharvani Shailendra i/b P.S.Dani, advs. for the
Petitioners.

Mr.Atul Rajadhayaksha Sr.Counsel with Mr.S.K.Shinde
, advs. for the Respondent No.1.

Mr.A.L.Patki, adv. for the Respondent No.3.

Mr.R.M.Patne, A.G.P. for the Respondent Nos.2, 4 to 7.

CORAM : J.H.BHATIA, J.

DATE : SEPTEMBER 7, 2007.

P.C.:

1. Heard the learned counsel for the Parties. The petitioners claim to be a group of social workers. According to them, the respondent no.1 was illegally carrying on mining and excavation activities within the reserved forest, Radha Nagari, Kolhapur without obtaining necessary environment clearance certificate from the authorities under the Environment Protection Act. On 10-5-2006 the present petitioners filed Regular Civil Suit No.395 of 2006 in the Court of Civil Judge Junior Division seeking perpetual injunction restraining the defendant no.1 from carrying out any mining or excavation activities within the said area without obtaining the necessary environment clearance certificate under the Environment Protection Act. On

the same day, they also filed an application for temporary injunction of the same nature. That application was rejected by the trial Court on the ground that the respondent no.1 was having a environment clearance certificate from the Maharashtra Pollution Control Board to whom the powers of Central Government are delegated. Against rejection of the application, the plaintiff preferred Miscellaneous Civil Appeal No.116 of 2006, which also came to be dismissed by the Ad-hoc District Judge-3 Kolhapur by the impugned judgment and order dated 13th October, 2006. Thereafter original plaintiffs have preferred this petition challenging the impugned orders passed by the Courts below.

2. This petition was filed on 21st December, 2006 but has come up before this Court for admission today only. The learned counsel for the respondent no.1 has pointed that pending this petition even Ministry of Forest and Environment in the Central Government has issued environment clearance certificate under the Environment Protection Act. There is no dispute that the Ministry of Forest and Environment is the competent authority under the Environment Protection Act to issue such a certificate. Temporary injunction was sought restraining the defendant no.1 from carrying out mining or excavation activities until obtaining such

certificate. As such a certificate is already issued by the competent authority , this petition has become infructuous.

3. It may be noted that there is a serious doubt as to whether the present petitioners could file any suit of this type because they do not claim any personal rights or interest in the property from which the defendant no.1 was carrying out excavation activities. However, I do not want to enter that arena because that can be looked into by the trial Court on its own merits. The learned counsel for the petitioner vehemently contended that the defendant no.1 had illegally excavated and carried out mining activities within the reserved forest for a long time prior to getting clearance certificate on 5-7-2007. If it is so, the competent authority may take action against the defendant no.1, as may be permitted by the law.

4. In view of the above circumstances, the petition stands disposed off.

[J.H.BHATIA, J.]